

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26-11-2019

Delivered on 10-01-2020

CRA No. 307 of 2011

1. Shyamlal s/o. Prabhu Sahu aged about 32 years.
2. Budhari s/o. Prabhu Sahu, aged about 30 years.
3. Ramlal s/o. Prabhu Sahu aged about 28 years.
4. Kaushal s/o. Prem Sahu aged about 25 (dead and deleted)

All are residents of village Chimra, Thana Kawardha, district Kabirdham (CG).

---- Appellants.

Versus

- State of Chhattisgarh through Station House Officer, Kawardha, District Kabirdham (CG).

---- Respondent

For Appellants : Mr. Rakesh Kumar Dubey, Advocate.

For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-3-2011 passed by the Special Judge, (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) (for short, "the Act, 1989"), Kabirdham (CG) in Special Case No. 64/2008 and 12 of 2009 wherein the said Court has convicted the appellants for commission of offence under Section 325 read with Section 34 of IPC, 1860 and sentenced them

to undergo rigorous imprisonment for two years and to pay fine of Rs. 1000/- to each of the appellant with default stipulations.

2. During pendency of the appeal appellant No.4 Kaushal s/o. Prem Sahu died on 19-1-2013 and his appeal finally stands abated.

3. In the present case, name of the victim is Sonau Ram Dhuray (PW/1). As per of prosecution, on 9-7-2008 at about 11.00 pm appellants called the victim Sonau Ram (PW/1) at their house and voluntarily caused injuries to him by clubs. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

4. Learned counsel for the appellants would submit as under:

- i) Statement of Sonau Ram (PW/1) is full of contradictions and omissions and his version before the trial court is improved version, therefore, same is not to be acted upon.
- ii The victim has entered into the house of the appellants therefore, it is not a case where appellants can be held guilty.
- iii) The trial court has not evaluated the entire evidence properly, therefore, finding of the trial court is liable to be

set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. As per version of Sonau Ram (PW/1) he went to the house of the Shyamlal on asking of appellant Budhari where all the four appellants assaulted him by clubs. Version of this witness is unrebutted during cross examination and it is further supported by version of Dr. Pratap Chand Prabhakar (PW/10) who noticed injuries on his body. Dr. G.K.Suryavanshi (PW/11) deposed that he found fracture on meta corporal bone and fracture in right ankle of the victim. Causing fracture is grievous as defined in Section 320 of the IPC. There is nothing on record to say that case of the appellants falls within in any exception mentioned in the IPC, therefore, the act of the appellant is voluntary in nature which falls within mischief of Section 325 of IPC for which the trial court convicted them. In view of this court, the argument advanced on behalf of the appellants is not sustainable. Their conviction under Section 325 read with Section 34 of IPC is hereby affirmed.

Appellant N.4 Kaushal died during pendency of the appeal and his appeal is abated. Looking to the number of appellants, it is not clear as to whose assault has caused fracture. In view of this court, no useful purpose would be served if the appellants are again sent to jail and jail sentence awarded to the appellants is reduced to the period already undergone by them which comes to six days and two days. However, fine amount imposed by the trial court shall remain intact.

8. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju